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 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE DISTRICT OF NEVADA
 10

11 UNITED STATES OF AMERICA,)	3:13-cr-108-MMD-VPC
)	
12 Plaintiff,)	Proposed Joint Amended Complex Case
)	Schedule Pursuant To Local Court Rule
13 v.)	16-1(a)
)	
14 VAN McDUFFY,)	
also known as Van McDuffie)	
15)	
Defendant.)	

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17 **PROPOSED AMENDED COMPLEX CASE SCHEDULE**

18 The Court has previously declared the case a complex case (C.R. 19) based upon the joint
 19 motion of counsel (C.R. 16) and the consent of Mr. McDuffy (C.R. 18). The Court has also ordered
 20 “that the from the filing of the Proposed Complex Case Schedule through the time until the Filing
 21 of the Notice of Intent regarding the death penalty is **excluded from the time within which trial**
 22 **must commence** under 18 U.S.C. §§ 3161(h)(7)(A) and (B)(I). (ii), and (iv).” C.R. 19 (emphasis is
 23 original). The time needed to complete the Department of Justice’s “death penalty protocol” is
 24 properly excluded under the Speedy Trial Act. See *United States v. Murillo*, 288 F.3d 1126 (9th Cir.
 25 2002) (holding that the Department of Justice’s death penalty protocol is a “valid reason to grant an
 26 ends of justice continuance” under 18 U.S.C. § 3161(h)(7)(8)(A)). It is the experience of counsel
 27 that, even in the most expeditious case, the time necessary to complete the “death penalty protocol”
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1 is usually between 12-18 months in cases in which the decision is to “not seek” the death penalty.
 2 This experience is based on actual time periods over the past ten years in five or more federal death
 3 penalty eligible cases which counsel has been counsel of record in the District of Nevada, either in
 4 Las Vegas or in Reno. For these reasons, the parties jointly request that the Court amend the prior
 5 complex case schedule (C.R. 19) as follows:

6 PROPOSED PREAUTHORIZATION AMENDED COMPLEX CASE SCHEDULE

7 1. The Initial Pre-Authorization Discovery Phase (No Changes).

8 The parties propose that the government shall have from until December 20, 2013 to disclose
 9 and provide the following:

- 10 a. all statements, documents, and objects, including audio and video recordings,
 11 required to be disclosed under Federal Criminal Rules of Procedure
 12 16(a)(1)(A)-(F);
- 13 b. all search warrants, orders authorizing the interception of wire, oral or
 14 electronic communications, and supporting affidavits, that relate to evidence
 15 that may be offered at trial;
- 16 c. all police or investigative reports that relate to the charges in the Indictment,
 17 except for reports or memoranda of interviews of witnesses the government
 18 intends to call in its case in chief.

19 If the government intends to withhold the disclosure of items based upon assertions of
 20 privilege or work product or otherwise, it must provide notice to the defense of its intent to withhold
 21 disclosure and describe the nature of the item and the basis for withholding disclosure.

22 2. Preauthorization Motions (Some Changes)

- 23 a. Preauthorization Motions, that is, all motions related to the Death Penalty
 24 Protocol, shall be filed on or before April 25, 2014. (No Change)
- 25 b. Responses to Preauthorization Motions shall be filed on or by May 23, 2014.
 26 (No Change)

1 c. Replies to Preauthorization Motions shall be filed on or by June 6, 2014. (**No**
2 **Change**).

3 d. Defendant Van McDuffie shall submit to the United States Attorney his
4 Memorandum to Preauthorization on or by **December 5, 2014** (changed from
5 August 29, 2014).

6 e. The United States Attorney shall meet with defense counsel regarding
7 Preauthorization on or by **January 9, 2015** (changed from October 3, 2014).

8 f. The United States Attorney shall submit his recommendation concerning
9 death penalty eligibility to the United States Department of Justice on or by
10 **February 6, 2015** (changed from October 31, 2014).

11 3. Post-Filing of Notice Of Intent Regarding The Death Penalty (**No Change**)

12 The parties will file an amended complex case schedule setting forth the schedule for further
13 discovery and discovery motions, pretrial motions, expert disclosure, and related matters within two
14 weeks of the filing of the Notice of Intent regarding the death penalty in the district court.

15 4. Trial Date (**No Change**)

16 The parties request that the trial date be set after the United States Attorney General makes
17 his decision whether to authorize the United States Attorney to seek or not seek the death penalty,
18 because the trial time necessary for trial of a federal capital case is dramatically different than the
19 time necessary for trial of a case where the defendant is subject to life imprisonment but not death
20 as the potential penalty.

21 5. Stipulations For Speedy Trial Purposes.

22 **IT IS HEREBY STIPULATED AND AGREED**, by and between Daniel G. Bodgen,
23 United States Attorney, and Megan Rachow, Assistant United States Attorney, counsel for the
24 United States of America, and Rene Valladares, Federal Public Defender, and Michael Kennedy,
25 Chief Assistant Federal Public Defender, and Cynthia L. Short, Esq., counsel for Van McDuffie, that
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1 the additional time beyond October 31, 2014 for the United States Attorney General to make his
 2 decision on whether to authorize or whether to not authorize the death penalty in this prosecution
 3 is time excluded by the Speedy Trial Act, pursuant to the Court's previous order (C.R. 19).

4 Dated this 18th day of April, 2014.

5 DANIEL G. BOGDEN
 6 United States Attorney

RENE VALLADARES
 Federal Public Defender

7 /s/ Megan Rachow
 8 MEGAN RACHOW
 9 Assistant United States Attorney
 Attorney for United States of America

/s/ Michael Kennedy
 MICHAEL J. KENNEDY
 Chief Assistant Federal Public Defender
 Attorney for Van McDuffy

10 /s/ Cynthia Short
 11 CYNTHIA L. SHORT
 12 McCallister Law Firm, P.C.
 13 Attorney for Van McDuffy

14 Van McDuffy
 15 Van McDuffy

16 **ORDER**

17 IT IS ORDERED that the schedules for filing pretrial motions and other filings dates set
 18 forth in this Amended Proposed Complex Case Schedule are hereby adopted and incorporated as part
 19 of this Order. IT IS FURTHER ORDERED that the jury trial previously vacated has been continued
 20 to a date to be set following the filing of the Notice of Intent regarding the death penalty and that the
 21 calendar call previously vacated has also been continued to a date to be set following the filing of
 the Notice of Intent regarding the death penalty.

22 **IT IS SO ORDERED.**

23 DATED this 22nd day of April, 2014

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 25 UNITED STATES DISTRICT JUDGE
 26 MIRANDA M. DU
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